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(2335)

IN THE

Supreme Court of the United States

October Term, 1965

No. 1040

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SUPREME COURT, U.S.

COUNTY BOARD OF ELECTION OF MONROE COUNTY, NEW YORK, ROBERT W. NORTHROP and KENNETH T. POWER, Commissioners of Election, Monroe County, New York,
and
LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

Appellants,

against

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

MEMORANDUM FOR THE ATTORNEY GENERAL OF NEW YORK

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Appellant pro se
The Capitol
Albany, New York 12224
and
WILLIAM A. STEVENS
Monroe County Legal Adviser
Attorney for Appellants, County Board of Election of Monroe County, Robert W. Northrop and Kenneth T. Power
307 County Office Building
Rochester, New York 14614

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LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

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MEMORANDUM FOR THE ATTORNEY GENERAL OF NEW YORK

This memorandum is submitted in reply to the memorandum of the Solicitor General of the United States in which he raises a question as to the jurisdiction of this Court.

It was, of course, the United States Department of Justice, itself, which sought the convening of a three-Judge Court in this case. The defendants in the action did not oppose that application so that the question posed in *Swift & Co., Inc.* v. *Wickham* (No. 9, this Term, decided November 22, 1965) was not before the District Court at the time of the argument on the merits. No question was raised on the record as to the jurisdiction of the three-Judge Court and the issue is not raised by the appeal to this Court.

Additionally, however, the *Swift* case also does not appear applicable on the merits. This is not a simple Supremacy Clause case. The question raised in the instant case is the ultimate constitutionality under the Fourteenth Amendment of both Section 4(e) of the Voting Rights Act and the applicable provisions of the State Constitution and statute. Only if the Federal statute is sustained does there come into existence a supremacy question and, in that event, supremacy would then be conceded.

The *Swift* case was a simple supremacy case, having no other constitutional base for the convening of a three-Judge Court. That is not so in this case.

As to the right of appellants here to file briefs *Amicus Curiae* in the *Morgan* case, we do not deem that a sufficient ground to urge this Court to deny jurisdiction of the appeal in the instant case. The appellants here would not have the right to present oral arguments in the *Morgan* case and would be dependent upon the presentation by counsel for appellees therein. Since appellants here are parties actually aggrieved by the decision of the District Court in this case, and by enforcement of Section 4(e) of the Voting

Rights Act, it is respectfully submitted that we also should be permitted to participate fully in an appeal on the merits.

February 23, 1966.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Intervenor-Appellant pro se
The Capitol
Albany, New York 12224

and

WILLIAM A. STEVENS
Monroe County Legal Adviser
Attorney for Appellants, County Board of Election of Monroe County, Robert W. Northrop and Kenneth T. Power
307 County Office Building
Rochester, New York 14614

RUTH KESSLER TOCH
Acting Solicitor General

JEAN M. COON
Assistant Attorney General
of Counsel

END